

STATE OF MICHIGAN
COURT OF APPEALS

MEDALIST GOLF CLUB, L.L.C., f/k/a/
MEDALIST GOLF PRACTICES FACILITY,
L.L.C.,

Plaintiff-Appellant,

v

BANK ONE OF MICHIGAN, f/k/a NBD BANK,

Defendant-Appellee.

UNPUBLISHED
August 23, 2005

No. 257625
Calhoun Circuit Court
LC No. 03-000138-CZ

BANK ONE NA,

Plaintiff-Appellee,

v

TIMOTHY B. CONDIT,

Defendant-Appellant.

No. 257626
Calhoun Circuit Court
LC No. 03-000868-CK

Before: Cooper, P.J. and Bandstra and Kelly, JJ.

PER CURIAM.

Timothy Condit and Medalist Golf Club appeal by leave granted the trial court's judgment holding them jointly and severally liable for a deficiency of \$469,511.15 after they defaulted on a loan. The deficiency amount included taxes, interest, attorney fees, and auction fees through the date of redemption. We affirm.

Condit and Medalist contend that the trial court erred when it awarded Bank One a deficiency judgment that included taxes and interest on the entire loan amount for the time after the foreclosure sale, attorney fees, and fees associated with the auction. We disagree. The trial court's determination of how much Condit and Medalist owed the defendant a question of fact, which is reviewed for clear error. MCR 2.613(C); *Law Offices of Lawrence J. Stockler v Rose*, 174 Mich App 14, 39; 436 NW2d 70 (1989).

In *First of America Bank-Oakland Macomb, NA v Brown*, 158 Mich App 76; 404 NW2d 706 (1987), we addressed whether the trial court erred in awarding the plaintiff interest on the entire loan amount in the deficiency judgment for the time between the foreclosure sale and the judgment because the sale extinguished the mortgage. We affirmed the trial court's ruling and held, "[a] mortgage, however, is merely a security for the principal debt. If the security fails to satisfy the amount owing, a deficiency judgment is proper. The debt is not extinguished because the security has not been foreclosed, and therefore the interest provided for in the promissory note continues to run." *Id.* at 81 (citations omitted).

Similarly, in this case the amount owing on the mortgage was \$2,268,438.33. Bank One purchased the property at the sheriff's sale for \$2,150,000.00. The security interest, therefore, failed to satisfy the amount owing. Applying the law as it is explained in *First of America*, we conclude that the trial court did not err in including interest through the date of redemption in the deficiency because the mortgage was not extinguished and the interest continued to run.

Condit and Medalist also submit that taxes are a lien on the property to be assumed by the purchaser; therefore, they should not be responsible for taxes that accrued after the sale. However, as stated above, the proceeds of the sale did not cover the amount owed on the loan. Therefore, the mortgage and agreement between the parties was not extinguished until the date of judgment. Because Condit and Medalist agreed to pay the applicable taxes under the mortgage agreement and that agreement was not extinguished at the sale, taxes are properly part of the deficiency judgment.

Condit and Medalist also contend that Bank One's bid at the sale was reduced by the amount of taxes owed; therefore, it should not be allowed to collect taxes as part of the deficiency. Although we agree that if the amount of the bid was reduced to reflect the anticipated taxes, Bank One should not be allowed to collect the taxes under the deficiency, such is not the case. The evidence presented at trial supports the conclusion that Bank One bid more than it determined the property was worth and did not consider taxes the owed. Therefore, taxes are properly part of the deficiency judgment.

Finally, Condit and Medalist claim the award of attorney fees, appraisal fees, and auctioneer fees are not included in the definition of deficiency; therefore, they should not be included in any deficiency judgment because such is an enlargement of MCL 600.3280. However, MCL 600.3280 does not define deficiency. Also, like taxes, the attorney fees, auction fees, and appraisal fees are all secured by the mortgage agreement, which was not extinguished in this case until the date of judgment. And, like the situation involving the taxes in the present case, there is no proof that Bank One reduced its bid because of the expenses it anticipated it would incur.

Affirmed.

/s/ Jessica R. Cooper
/s/ Richard A. Bandstra
/s/ Kirsten Frank Kelly